

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 29, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP1429-CR

Cir. Ct. No. 2011CF1601

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TERRENCE L. JOHNSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DAVID A. HANSHER, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Terrence L. Johnson, *pro se*, appeals from a judgment of conviction, entered upon a jury's verdicts, on thirteen various counts. Johnson also appeals from an order denying his motion for postconviction relief. On appeal, Johnson claims there was insufficient evidence supporting seven of his

convictions and that the State lacked jurisdiction over five other offenses.¹ We reject these arguments and affirm the judgment and order.

BACKGROUND

¶2 In August 2010, a U.S. Bank branch reported someone had used the automated teller machine to deposit a check for \$186,892.87, drawn on an account supposedly at Fidelity Investment Institutional Operations Company. Fidelity reported that the check was fraudulent. According to a detective, Johnson admitted making the check and driving a man to the bank to deposit the check into the account of Johnson's fiancée, Sharbondee Credit.

¶3 In October 2010, shortly after landlord Mark Rosen wrote a check from his U.S. Bank account to tenant Johnson, Rosen learned that his account number was being used on checks purportedly belonging to "T & R Communications," a business later linked to Johnson. A check for \$806.23, payable to "Xavior Davis" and signed by Johnson, was cashed at a check-cashing service. Photos from the surveillance video showed Xavier Davis cashing the check. Police interviewed Deniais Gray as a suspect with regard to the checks using Rosen's account number. Gray said she was with Davis and someone named Mario, and they were discussing someone called TJ who "does bogus checks." The trio went to a house near 53rd and Center—the location of Johnson's house—where TJ told them the bank had just allowed him to open his business and he would "do fake checks." He went to his bedroom and printed

¹ Johnson makes no appellate challenge to his conviction on Count 5, a charge of forgery (uttering) as party to a crime.

checks for Davis and Gray. Davis was able to cash his check at the check-cashing service but Gray's was declined. Gray identified Johnson as TJ.

¶4 In January 2011, a man named Gary Williams presented a check drawn on Midwest Bank for \$18,230 to purchase a 2002 BMW from Parminder Dhillon, the owner of Mid-Town Motors. Another man accompanied Williams; Dhillon identified Johnson as the other man. The vice-president of compliance for Midwest Bank reported that the check was fraudulent: though the name and address of the bank were correct, the account number was not one of Midwest's. Williams admitted using the check and that he knew it to be "bogus" because he did not have \$18,000. He told police he had obtained the check from Johnson, whom he identified from a photo lineup. Williams was unable to take possession of the vehicle because it had ignition problems.

¶5 Similar situations occurred that month at a Gordie Boucher dealership, a Russ Darrow dealership, and Frontier Motor Cars. At Gordie Boucher, Johnson's fiancée Credit was the buyer. She claimed to have received the check—again drawn on Midwest Bank—for her purchase from John Young in Johnson's presence. Credit was able to take possession of and title to the vehicle she "bought."

¶6 At Russ Darrow, Tathesha Cummings was the buyer. The first check she had was insufficient to pay for the vehicle, so she went back the next day, accompanied by Credit, with two checks drawn on Midwest Bank. Cummings took possession of and title to the vehicle. Credit admitted accompanying Cummings and knowing that the checks were fraudulent. She said she got the first check from Johnson and the second check from Young.

Cummings said that the first check was from TJ and the second check was from Renee—a pseudonym Credit had been using. Cummings identified Johnson as TJ.

¶7 At Frontier, Credit presented a check for \$16,846.74, drawn on Midwest Bank, to purchase a Cadillac Escalade. Credit admitted knowing the check was fraudulent and stated that she had obtained the check from Johnson. Credit had been able to take possession of and title to the Escalade.

¶8 Each of the checks from Midwest Bank had a toll-free number that could be called for verification. Each time the number was called by personnel at a dealership, someone on the other end of the line “confirmed” the checks’ validity.

¶9 Police had executed a search warrant at Johnson’s home on December 3, 2010. During execution of the warrant, they recovered multiple items to be used in the creation of fraudulent checks, including various types of checks, check stock, and blank checks in various stages of completion, some of which bore Midwest Bank’s logo or other information.

¶10 Johnson was charged with thirteen counts: twelve in the original criminal complaint, all of which included the party-to-a-crime modifier, and a thirteenth added by a subsequent information. These charges were:

Count 1: forgery (uttering), for the Fidelity check deposited at the ATM;

Count 2: identity theft, for using Fidelity’s information on the check;

Count 3: forgery (uttering), for Gray’s attempted cashing of a check from T & R Communications using Rosen’s U.S. Bank account number;

Count 4: forgery (uttering), for Davis's cashing of a check from T & R Communications using Rosen's U.S. Bank account number;

Count 5: forgery (uttering), for presenting a Midwest Bank check to Mid-Town Motors;

Count 6: identity theft, for using Midwest Bank's information on the check to Mid-Town;

Count 7: theft by false representation, greater than \$10,000, for obtaining a vehicle from Gordie Boucher with a fraudulent check;

Count 8: identity theft, for using Midwest Bank's information on the check to Gordie Boucher;

Count 9: theft by false representation, greater than \$10,000, for obtaining a vehicle from Russ Darrow with a fraudulent check;

Count 10: identity theft, for using Midwest Bank's information on the check to Russ Darrow;

Count 11: theft by false representation, greater than \$10,000, for obtaining a vehicle from Frontier Motor Cars with a fraudulent check;

Count 12: identity theft, for using Midwest Bank's information on the check to Frontier; and

Count 13: identity theft, for possession with intent to use Midwest Bank's identifying information as of the date of the search warrant.

In sum, then, Johnson was charged with four counts of forgery (uttering), six counts of identity theft, and three counts of theft by fraud.

¶11 Johnson represented himself at trial. The jury convicted him of all thirteen counts. The circuit court's sentences, a combination of concurrent and consecutive imprisonment terms, appear structured to yield a total of six years' initial confinement and six years' extended supervision. Johnson moved for postconviction relief, claiming insufficient evidence supported all of the verdicts

except for Count 5. The circuit court denied the motion and a subsequent reconsideration motion.

DISCUSSION

Sufficiency of the Evidence

¶12 On appeal, Johnson first claims that there was insufficient evidence to support the verdicts on Counts 1, 2, 3, 4, 7, 9, and 11.² With respect to Counts 1 and 2, Johnson claims the evidence is insufficient because neither U.S. Bank nor Fidelity claimed to have been a victim of the crimes. With respect to Counts 3 and 4, Johnson claims the evidence is insufficient because Karl Tatum—who we presume is the owner or president of the check cashing-service used by Davis and Gray—was never subpoenaed to testify. With respect to Counts 7, 9, and 11, Johnson claims there is insufficient evidence because “[t]here is ‘no one’ who physically saw or heard Mr. Johnson communicate a statement to the victims that was a false representation” and there is no proof that the toll-free “verification” number on the checks is connected to him.

¶13 When we review the sufficiency of the evidence to support a conviction, “we may not substitute our judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Mertes*, 2008 WI App 179, ¶10, 315 Wis. 2d 756, 762, 762 N.W.2d 813, 816. “[I]f more than one reasonable

² Johnson’s arguments on appeal are slightly different than those he made in the circuit court. The State does not ask us to apply a waiver or forfeiture doctrine against Johnson’s appellate claims; however, we will review only those arguments Johnson has briefed on appeal.

inference can be drawn from the evidence, we must adopt the inference that supports the verdict.” *Ibid.* “[A] finding of guilt may rest upon evidence that is entirely circumstantial[.]” *See State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752, 755 (1990). ““Circumstantial evidence is evidence from which a jury may logically find other facts according to common knowledge and experience.”” *Mertes*, 2008 WI App 179, ¶14, 315 Wis. 2d at 763, 762 N.W.2d at 817 (quoting WIS JI—CRIMINAL 170). The standard of review for sufficient evidence is the same whether the evidence presented at trial is direct or circumstantial. *See Poellinger*, 153 Wis. 2d at 503, 451 N.W.2d at 752.

¶14 Counts 1, 3, and 4 alleged that Johnson uttered a forged check. “Uttering a forged writing ... is committed by one who utters as genuine a forged writing or object by which legal rights or obligations are created or transferred, knowing that the writing or object was falsely made or altered.” WIS JI—CRIMINAL 1492.

¶15 There are four elements to the offense. First, the document must have been a writing by which legal rights or obligations are created or transferred; a bank check is such a document. *Ibid.* Second, the check must have been forged, that is, falsely made, and must have been falsely made to appear to have been made by another person or by authority of someone who really did not give such authority. *Ibid.* Third, the check must have been uttered as genuine by the defendant or another person whom the defendant was aiding and abetting; to utter a check as genuine simply means that the check is presented for payment or is deposited with the representation that the check is genuine. *Ibid.*, *see also* WIS JI—CRIMINAL 400. Fourth, the defendant must have known that the check was falsely made at the time it was presented. *See* WIS JI—CRIMINAL 1492.

¶16 Johnson was charged as a party to a crime for his forgeries, either because he directly committed or intentionally aided and abetted the people who directly committed them. “If a person intentionally aids and abets the commission of a crime, then that person is guilty of the crime as well as the person who directly committed it.” WIS JI—CRIMINAL 400; *see also* WIS. STAT. § 939.05. A person intentionally aids and abets the commission of a crime when, acting with knowledge or belief that another person is committing or intends to commit a crime, he knowingly either assists the person who commits the crime; or is ready and willing to assist and the person who commits the crime knows of the willingness to assist. WIS JI—CRIMINAL 400 (internal punctuation omitted). None of the elements of forgery or the party-to-a-crime modifier requires the victim to testify that it was a victim. Further, sufficient evidence was presented to support all three of the challenged forgery convictions.

¶17 Count 1 alleged that Johnson, as party to a crime, uttered a forged bank check when a check for \$186,892.87 and drawn on a Fidelity account was deposited into an ATM. Tracie Dubois, from Fidelity, testified that the black margin at the top of the deposited check was different from a typical Fidelity check. Detective Cheryl Welch testified that when she showed Johnson the deposited check, he admitted making the check and that someone named Trey deposited it. These facts, and the reasonable inferences therefore, support the conviction for forgery on Count 1.

¶18 Counts 3 and 4 involve the forged checks drawn on U.S. Bank and bearing Rosen’s account number that purported to be from T & R Communications and were made payable to Davis and Gray. Davis testified that he had done work for T & R Communications, which was supposedly run by Johnson. Davis stated that “Sharice,” who was actually Credit, had given him his

check. Gray testified she received her check from Johnson at his house. Gray stated that Johnson was in the business of “making bogus checks” and that he told her he was going to make checks for her and Davis and that both should give him \$400 if they cashed the checks. Rosen testified, identifying the account number as his former U.S. Bank account number, and stating that he had written a check to Johnson shortly before someone appropriated the number. Rosen also opined that Johnson’s signature on the checks matched the signature on the rental application Rosen had on file. These facts, and the reasonable inferences therefrom, adequately support Johnson’s forgery convictions on Counts 3 and 4.

¶19 Count 2 alleged identity theft, contrary to WIS. STAT. § 943.203(2), as party to a crime.³ Section 943.203(2) is violated by one who intentionally uses, attempts to use, or possesses with intent to use any identifying information or identification document of an entity to obtain credit, money, goods, services, or anything else of value or benefit without the authorization or consent of the entity and by representing that he or she is acting with the authorization or consent of the entity. WIS JI—CRIMINAL 1459.

¶20 There are four elements to this offense. First, the defendant or other person he was aiding and abetting must have intentionally used identifying information of an entity. *Ibid.* A corporation is an entity, *ibid.*, and an entity’s name and address are identifying information, *see* WIS. STAT. § 943.203(1)(c)1.-2. Second, the defendant must have intentionally used identifying information of the entity to obtain credit, money, goods, services, or anything else of value or benefit.

³ The jury instruction describes this offense as “unauthorized use of an entity’s identifying information.” *See* WIS JI—CRIMINAL 1459.

See WIS JI—CRIMINAL 1459. Third, the defendant must have acted “without the authorization or consent of the entity and knew that the entity did not give authorization or consent.” *Ibid.* Finally, the defendant must have intentionally represented that he was acting with the authorization or consent of the entity. *Ibid.*

¶21 Count 2 also related to the check drawn on Fidelity and deposited in the U.S. Bank ATM. The Fidelity representative was asked whether Johnson had permission from or was hired by Fidelity to print the check. She answered, “Not that I’m aware of.” The check bears Fidelity’s name on front. Johnson admitted making the check. His intent to obtain money or anything else of value by using Fidelity’s name is easily and reasonably inferred. Sufficient evidence supports the verdict on Count 2.

¶22 Counts 7, 9, and 11 are theft by fraud charges, as party to a crime, because others obtained title to vehicles with fake checks made by Johnson. Theft by fraud “is committed by one who obtains title to property of another person by intentionally deceiving that person with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made.” WIS JI—CRIMINAL 1453A.

¶23 There are seven elements to a theft by fraud charge. First, the State must show that a particular person or entity was the owner of property. *Ibid.* Second, the State must show that the defendant, or a person he was aiding and abetting, made a false representation of past or existing fact to the owner or a third person if the defendant intended or had reason to expect that the statement would be communicated to the owner and that it would influence the owner’s conduct in the transaction. *See ibid.* Third, the defendant must have known the representation was false. *Ibid.* Fourth, the defendant must have made the

representation with intent to deceive and to defraud the owner. *Ibid.* Fifth, the defendant must have obtained title to the property of the owner by the false representation. *Ibid.* Sixth, the owner must have been deceived, or misled, by the representation. *Ibid.* Finally, the owner must have been defrauded by the representation; this requires that the owner did in fact part with title to property in reliance, at least in part, on the false representation. *Ibid.*

¶24 Johnson's fiancée, Credit, testified that she went to Gordie Boucher to buy a vehicle after Johnson spoke to the dealership on the phone. Johnson sent Credit with a check from Midwest Bank that he printed on his computer. Similarly, Credit admitted presenting a check Johnson made to Frontier Motors. Credit also testified that Cummings got involved after Credit was able to buy a car from Gordie Boucher: "the next day we pretty much went out and got her one" from Russ Darrow with checks Johnson had made. Cummings admitted using Johnsons' checks to buy a vehicle.

¶25 Sales managers from each of the dealerships indicated speaking to someone at the "bank" to verify the checks and about how the women were allowed in each case to leave with the vehicles and title thereto. Detective Welch testified not only about the check-making equipment in Johnson's home but also about his phone records showing numerous calls between his local phone number and the dealers. The detective also testified that the toll-free number on the checks was difficult to trace, as those numbers are often sold and resold, but the number can be forwarded to a cellular number.

¶26 Johnson's primary sufficiency complaint with respect to these three charges is that no one actually saw him on the other end of the phone giving false statements to the dealerships in confirming the checks. Although we think a jury

could have reasonably inferred that Johnson was playing the role of the bank, confirming the checks' validity was not the only false representation in these transactions. The mere presentation of the checks as valid tender was a false representation, sufficient to satisfy that element of theft by fraud.

Jurisdiction

¶27 Johnson also claims that the State lacked jurisdiction over Counts 6, 8, 10, 12, and 13—the remaining identify theft charges contrary to WIS. STAT. § 943.203—because Midwest Bank, the victim in all five counts, is located in Minnesota and has no branches in Wisconsin.⁴ He points to WIS. STAT. § 939.03(1)(e), which gives this state jurisdiction when a person violates § 943.203 “and the victim, at the time of the violation, is ... an entity ... that is located in this state.”

¶28 However, the State also has jurisdiction over a crime when someone “commits a crime, any of the constituent elements of which takes place in this state.” WIS. STAT. § 939.03(1)(a). While Johnson evidently believes § 939.03(1)(e) overrides § 939.03(1)(a) in some fashion, he is mistaken. Under § 939.03(1), “[a] person is subject to prosecution and punishment under the law of this state if *any* of the [seven specified conditions] applies[.]” Inapplicability of one paragraph does not preclude application of another.

⁴ Johnson did not raise this argument in the circuit court. Ordinarily, we do not consider arguments raised for the first time on appeal, *see State v. Caban*, 210 Wis. 2d 597, 604, 563 N.W.2d 501, 505 (1997), though we have the authority to do so, *see State v. Huebner*, 2000 WI 59, ¶28, 235 Wis. 2d 486, 497, 611 N.W.2d 727, 732. We are addressing the jurisdictional issue because the State briefed it on the merits and did not ask us to apply the rule from *Caban*.

¶29 “It is elementary that a court may act only upon crimes committed within the territorial jurisdiction of the sovereignty seeking to try the offense.” *State v. Randle*, 2002 WI App 116, ¶18, 252 Wis. 2d 743, 753, 647 N.W.2d 324, 329 (citation omitted). This rule is codified by WIS. STAT. § 939.03(1)(a) and its requirement that any “constituent elements” of the crime take place in this state. “[T]he ‘constituent elements’ of an offense are those elements of the criminal offense that the State is required to prove beyond a reasonable doubt in the prosecution of the offense.” *State v. Anderson*, 2005 WI 54, ¶33, 280 Wis. 2d 104, 127, 695 N.W.2d 731, 742. With the exception of presenting the Fidelity check to an ATM in Minnesota—an offense the State’s jurisdiction over which Johnson is not challenging on appeal—all of the other constituent elements of Johnson’s offenses occurred in Wisconsin. Accordingly, the State had jurisdiction to charge all thirteen offenses.

By the Court.—Judgment and order affirmed.

This opinion shall not be published. See WIS. STAT. RULE 809.23(1)(b)5.

